

REMARKS

Claims 1, 2, 4-14, and 16-24 are pending in the present application. Claims 3, 15, and 25-28 were previously canceled. In this response, no claims have been canceled, added, or amended. Accordingly, claims 1, 2, 4-14, and 16-14 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Claim Rejections – 35 USC §103

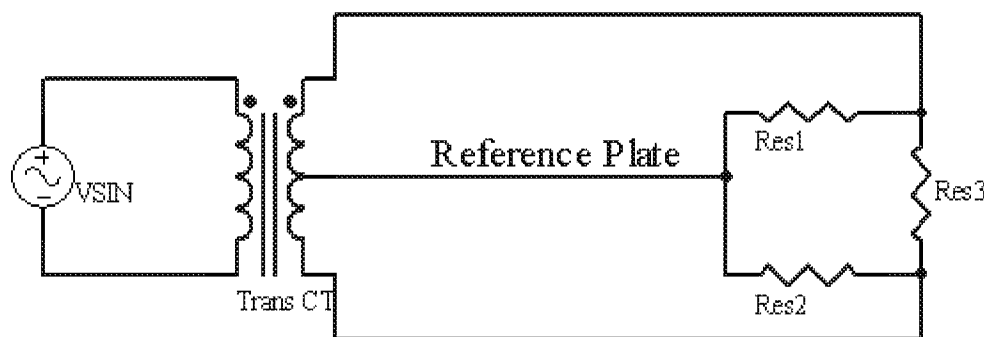
A. Claims 1, 2, 4-9, 13, 14, 16-22, and 28 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. 5,620,481 to Desai et al. (Desai) in view of U.S. 5,892,667 to Glasband et al. (Glasband). Specifically, the Office Action states that Desai and Glasband do not teach an indifferent electrode connected to the ground reference of the tap with the ground reference of the tap and the indifferent electrode being tied to a ground reference on the primary side of the transformer. However, the Office Action further states that this claimed arrangement would have been obvious to a skilled artisan at the time of the invention in light of the lack of any disclosed criticality for the specific arrangement, and because the mere rearrangement of parts is not patentably significant if it does not impact operation of the device.

Applicants disagree with this rejection. In a first important aspect, this is because the claimed configuration results in a safer system. If the indifferent electrode (reference electrode) was not connected to the ground reference on the primary side of the transformer, and if the transformer failed, then the patient could be exposed to high voltages from the RF generator. Also, if the indifferent electrode failed on the secondary side, the patient could be exposed to high voltages. Thus, the claimed arrangement of the system components impacts safe operation of the device.

Applicants further submit that “The mere rearrangement of parts of the reference device to meet the terms of the claims....is not itself sufficient to support a finding of obviousness. ***The prior art must provide a motivation or reason for the worker in the art, without the benefit of the instant specification, to make the necessary changes in the reference device.***” (See MPEP

2144.04). Both Desai and Glasband clearly fail to describe an indifferent electrode connected to the ground reference of the tap with the ground reference of the tap and the indifferent electrode being tied to a ground reference on the primary side of the transformer, or any reason or motivation to change their system designs to correspond to the claimed system. In view of the above, it is submitted that the claimed system arrangement is unobvious.

Furthermore, Applicants reiterate that an ordinary artisan would have no reason to combine the disclosures of Glasband and Desai. To illustrate, a simplified circuit of the claimed system is shown in the schematic below.



In the schematic, $Res1$ refers to the impedance between a first active electrode and the patient's body via the indifferent or reference electrode, $Res2$ refers to the impedance created between the second active electrode and the patient's body via the indifferent or reference electrode, and $Res3$ refers to the impedance between the two active electrodes.

Based on the schematic, Applicants submit that one of ordinary skill in the art would know that the patient's body, itself, forms the load on the secondary side of the transformer of the present system as claimed. However, when the electrodes are brought into contact with tissue in the patient's body, there is no guarantee that $Res1$ and $Res2$ will be the same because the tissue-electrode contact of electrode 1 may differ from the tissue-electrode contact of electrode 2. Thus,

an unbalanced load would normally result, which is accommodated by use of the reference backplate electrode being, effectively, connected to the load.

Glasband, as its title itself suggests, does not contemplate use of a system having unbalanced loads. To the contrary, as stated in the abstract of Glasband, symmetrical AC power applied to the load results in a reduction or elimination of reactive load currents, other power artifacts, EMI and RFI emissions, and other interference and noise components. This is achieved “by having equal, inversely phased signal elements, which cancel one another” (Applicants' emphasis). Thus, given that Glasband does not teach, describe, or suggest the use of a power system to be used with unbalanced loads, Applicants submit that it would be unreasonable for an ordinary artisan to combine Glasband with Desai to obtain the claimed RF system.

In view of the above, withdrawal of the rejection under 35 U.S.C. §103(a) is respectfully requested.

B. Claims 10-12 and 23-24 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. 5,892,667 to Glasband et al. and U.S. 5,620,481 to Desai et al. as applied to claims 9 and 22 above, and further in view of U.S. 6,497,704 to Ein-Gal (Erin-Gal). The Office Action states that Glasband and Desai teach the system of claim 9, but not at least one of the electrodes having a helical tip. The Office Action further states that it would have been obvious to one having ordinary skill in the art to modify Glasband and Desai with a helical tip in view of the disclosure of Ein-Gal because Ein-Gal teaches that it is preferable to screw the electrode into a tissue.

Applicants disagree with this rejection. As discussed above, Glasband and Desai alone or in combination, fail to disclose all claim elements. Specifically, the cited references fail to disclose a ground reference on the primary side of the transformer. Ein-Gal, which the Office adds for its description of helical electrode tips, also lacks disclosure of a ground reference on the primary side of the transformer. Given that Desai and Ein-Gal do not cure the defect in Glasband, the combination of cited references cannot render the instant claims obvious.

Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) is respectfully requested.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Office is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Office is invited to telephone the undersigned at the number given below.

In the event the Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 559022001200. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: June 28, 2010

Respectfully submitted,

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